

DAVID CHIU, State Bar #189542
City Attorney
JONATHAN C. ROLNICK, State Bar #151814
Chief Labor Attorney
ADAM SHAPIRO, State Bar #245368
LAUREN E. WOOD, State Bar #280096
Deputy City Attorneys
Fox Plaza
1390 Market Street, 5th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3830
Telephone: (415) 554-4261
E-Mail: adam.shapiro@sfcityatty.org
E-Mail: lauren.wood@sfcityatty.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO
in *Guardado, et al. v. City and County of San Francisco*
Case No. 3:22-cv-4319-TLT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SELINA KEENE, MELODY FOUNTILA,
MARK MCCLURE,

Plaintiffs,

vs.

CITY and COUNTY OF SAN FRANCISCO;
LONDON BREED, Mayor of San Francisco in
her official capacity; CAROL ISEN, Human
Resources Director, City and County of San
Francisco, in her official capacity; DOES 1-
100,

Defendants.

Case No. 4:22-cv-01587-JSW

**NOTICE OF MOTION AND
ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED**

(Civil L.R. 3-12(b) and 7-11)

DAVID GOZUM,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
HUMAN SERVICES AGENCY, AND DOES
1 TO 100,

Defendants.

Case No. 4:22-cv-03975-KAW

JOSE GUARDADO, MELISSA BORZONI,
ANDREW MALONEY, ROMMEL
TAYLOR, PENNI EIGSTER, TARA
AMADO, and DANIELLE BOLOGNA on
behalf of themselves and all other similarly
situated persons,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; and DOES 1 through
100,

Case No. 3:22-cv-4319-TLT

NOTICE OF MOTION AND MOTION

TO THE COURT AND PLAINTIFFS

PLEASE TAKE NOTICE that Defendant City and County of City of San Francisco will and hereby does move the Court to consider whether *Keene v. City and County of San Francisco*, Case No. 22-cv-01587-JSW (the “*Keene* Action”) is related to two later filed actions: *Gozum v. City and County of San Francisco*, N.D. Cal. Case No. 4:22-cv-03975-KAW (the “*Gozum* Action”) and *Guardado, et al. v. City and County of San Francisco*, N.D. Cal. Case No. 3:22-cv-4319-TLT (the “*Guardado* Putative Class Action”). This motion is made pursuant to Civil Local Rules 3-12(b) and 7-11.

Dated:

DAVID CHIU
City Attorney
JONATHAN C. ROLNICK
Chief Labor Attorney
LAUREN E. WOOD
ADAM SHAPIRO
Deputy City Attorneys

By: /s/ Adam Shapiro
ADAM SHAPIRO

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO, in
Guardado, et al. v. City & County of San Francisco, No.
4:22-cv-4319-TLT

INTRODUCTION

Pursuant to Civil Local Rules 3-12(b) and 7-11, the City and County of San Francisco (the “City”) respectfully asks the Court to consider whether *Keene v. City and County of San Francisco*, Case No. 22-cv-01587-JSW (the “*Keene* Action”) is related to two later filed actions: *Gozum v. City and County of San Francisco*, N.D. Cal. Case No. 4:22-cv-03975-KAW (the “*Gozum* Action”) and *Guardado, et al. v. City and County of San Francisco*, N.D. Cal. Case No. 3:22-cv-4319-TLT (the “*Guardado* Putative Class Action”), and whether all three actions should be assigned to the Honorable Jeffrey S. White, who has already been assigned the *Keene* Action, the lowest-numbered case.

The *Keene* Action, *Gozum* Action, and *Guardado* Putative Class Action are substantially related. The City is the only defendant in all three actions. All three actions were brought by current or former City employees who sought religious exemptions under the City’s Covid-19 vaccination policy. All three actions seek injunctive and declaratory relief related to the City’s COVID-19 vaccination policy. All three actions allege religious discrimination in violation of Title VII of the federal Civil Rights Act of 1964 (“Title VII”) and California’s Fair Employment and Housing Act (“FEHA”), due to an alleged failure to provide plaintiffs with religious accommodations.

The City met and conferred with plaintiffs’ counsel in the *Keene* and *Guardado* Actions¹ before filing this motion. (Declaration of Adam M. Shapiro in Support of Motion (“Shapiro Decl.”), ¶ 2.)

BACKGROUND

I. The *Keene* Action

The *Keene* Action was filed on March 14, 2022 against the City. Shapiro Decl. Ex. 1. London Breed (the Mayor of San Francisco), and Carol Isen (the City’s Director of Human Resources) were also sued in their individual capacities, but on September 23, 2022, the Court granted a motion to dismiss these individual defendants, thus the City is the only remaining defendant. Shapiro Decl. Ex. 2.

¹ Kevin T. Snider of the Pacific Justice Institute represents the plaintiffs both the *Keene* Action and the *Guardado* Putative Class Action.

1 The three plaintiffs, Selina Keene, Melody Fountila, and Mark McClure, allege that they were
 2 employees of the City, they were opposed to taking the COVID-19 vaccine due to their religious
 3 beliefs, and they were denied an accommodation to the vaccine mandate imposed by the City. Shapiro
 4 Decl. Ex. 1 ¶¶ 8, 9, 10. The *Keene* plaintiffs assert causes of action for (1) failure to provide religious
 5 accommodation in violation of Title VII, (2) failure to provide religious accommodation in violation of
 6 FEHA. *Id.* ¶¶ 25-44.

7 On September 23, 2022, the Court denied the Plaintiff's motion for preliminary injunction.
 8 Shapiro Decl. Ex. 2.

9 **II. *Gozum* Action**

10 The *Gozum* Action was originally filed in San Francisco Superior Court on April 22, 2022. On
 11 June 6, 2022, the plaintiff filed a First Amended Complaint that added a cause of action for religious
 12 discrimination under Title VII, and the City subsequently removed the *Gozum* Action to the Northern
 13 District of California on July 6, 2022. Shapiro Decl. Exs. 3, 4. The sole plaintiff David Gozum alleges
 14 that he sought a religious accommodation to be exempted from the City's COVID-19 vaccine mandate
 15 based on his religious beliefs, which was denied. Shapiro Decl. Ex. 3 ¶¶ 8, 11. Plaintiff further alleges
 16 that he was ultimately dismissed from employment due to his refusal to vaccinate. *Id.* ¶ 13. Plaintiff
 17 Gozum brings two causes of action: (1) failure to provide religious accommodation in violation of
 18 FEHA, and (2) failure to provide religious accommodation in violation of Title VII. *Id.* ¶¶ 14-24.
 19 Plaintiff seeks compensatory damages and injunctive relief.

20 **III. *Guardado* Putative Class Action**

21 The *Guardado* Putative Class Action was filed July 26, 2022. Shapiro Decl. Ex. 5. The seven
 22 plaintiffs allege religious beliefs prevented them from receiving the COVID-19 vaccine, that they
 23 requested an exemption from the City's vaccine mandate, and they were ultimately discharged due to
 24 their failure to vaccinate. *Id.* ¶¶ 5-11. The plaintiffs assert claims for (1) failure to provide religious
 25 accommodation in violation of Title VII, (2) violation of the "religious clauses" of the First
 26 Amendment to the U.S. Constitution, and (3) failure to provide religious accommodation in violation
 27 of FEHA.
 28

1 The putative class in *Guardado* is defined as: “All employees presently or previously
 2 employed by San Francisco (1) who have been ordered to submit to a COVID-19 vaccination, (2) who
 3 have submitted a written request for a religious accommodation, and (3) whose requests were denied
 4 due to a finding of a lack of religious sincerity and/or due to the claim that granting a religious
 5 accommodation would pose an undue hardship on San Francisco.” *Id.* ¶ 14. This class definition
 6 appears to encompass all of the plaintiffs in the *Keene* Action and the plaintiff in the *Gozum* Action.
 7 As in the *Keene* Action and the *Gozum* Action, the *Guardado* plaintiffs seek injunctive relief
 8 concerning application of the City’s vaccine mandate.

9 DISCUSSION

10 Two cases are related if:

- 11 (1) The actions concern substantially the same parties, property, transaction, or event; and
- 12 (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before
- 13 different Judges.

14 N.D. Cal. Local Civil Rule 3-12(a). Whenever a party believes an action filed in this district may be
 15 “related to an action which is or was pending in this District ..., the party must promptly file in the
 16 lowest-numbered case an Administrative Motion to Consider Whether Cases Should be Related.” *Id.*
 17 Rule 3-12(b). “If any Judge decides that any of the cases are related, pursuant to the Assignment Plan,
 18 the Clerk shall reassign all related higher-numbered cases to that Judge and shall notify the parties and
 19 the affected Judges accordingly.” *Id.* Rule 3-12(f)(3).

20 Here, the *Guardado*, *Keene*, and *Gozum* Actions concern substantially the same parties. The
 21 City is the sole remaining defendant in all three actions. The plaintiffs in all three actions are City
 22 employees who are challenging the City’s vaccine mandate under FEHA and Title VII, and the
 23 putative class in the *Guardado* Action encompasses all of the plaintiffs in the *Keene* and *Gozum*
 24 Actions. All three actions concern substantially the same events, as they arise out of challenges to the
 25 City’s vaccine mandate, including the validity of the policy, both facially and as applied.

26 It is also “likely that there will be an unduly burdensome duplication of labor and expense or
 27 conflicting results if the cases are conducted before different Judges.” N.D. Cal. Local Civil Rule 3-
 28 12(a)(2). All three cases assert nearly identical causes of action under FEHA and Title VII, and all

1 three cases challenge the same policy on the same grounds. Moreover, in the *Guardado* Putative Class
2 Action, plaintiffs seek declaratory relief that, if granted, would impact the plaintiffs in the *Keene* and
3 *Gozum* Actions. In the interest of judicial efficiency, and to avoid conflicting decisions, these three
4 matters should be heard before the same Judge.

5 CONCLUSION

6 Because these three cases are related, the Court should assert its case management authority
7 over them and find that they are related. Further, the actions should be reassigned consistent with
8 Local Rule 3-12.

9
10 Dated: October 7, 2022

11 DAVID CHIU
12 City Attorney
13 JONATHAN C. ROLNICK
14 Chief Labor Attorney
15 LAUREN E. WOOD
16 ADAM SHAPIRO
17 Deputy City Attorneys

18 By: /s/ Adam Shapiro
19 ADAM SHAPIRO

20
21 Attorneys for Defendant
22 CITY AND COUNTY OF SAN FRANCISCO, in
23 *Guardado, et al. v. City & County of San Francisco*, No.
24 4:22-cv-4319-TLT
25
26
27
28